

VZCZCXRO7948
OO RUEHGA RUEHHA RUEHMT RUEHQU RUEHVC
DE RUEHOT #0198 0711854
ZNR UUUUU ZZH
O 121854Z MAR 09
FM AMEMBASSY OTTAWA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 9207
INFO RUCNCAN/ALL CANADIAN POSTS COLLECTIVE PRIORITY
RUEHLO/AMEMBASSY LONDON 1013

UNCLAS OTTAWA 000198

SIPDIS

SENSITIVE

E.O. 12958: N/A
TAGS: [PTER](#) [PGOV](#) [CA](#)
SUBJECT: FIRST SENTENCING IN TERRORIST TRIAL

¶1. (SBU) Summary: On March 13, an Ontario Superior Court judge sentenced convicted Canadian terrorist Momin Khawaja to ten-and-a-half years in prison on terrorism-related charges, with no eligibility for parole for five years. Khawaja was the first Canadian to be charged under Canada's 2001 Anti-terrorism Act and is the first to receive a sentence under the Act in this landmark terror case. Separately, the government has just re-introduced amendments to the Act in the 40th Parliament to restore certain anti-terrorism powers that had lapsed in 2007; proposed legislation to reinstate them had died with the dissolution of the 39th Parliament in September 2008. End summary.

¶2. (U) Canadian authorities arrested Momin Khawaja in March 2004 in connection with a U.K.-based terror conspiracy to attack targets in London. The Crown convicted him in October 2008 on charges of participating in terrorist training, financing, and facilitating terrorism under the 2001 Anti-terrorism Act, as well as two charges under the Criminal Code for offences related to building a remote-controlled device to detonate explosives. Khawaja had pled not guilty to the charges. Khawaja's four-month landmark trial took place between June 23 and October 30, 2008. He has already spent almost five years in custody, most of which was consumed by pre-trial constitutional and challenges to the untested Anti-terrorism Act.

¶3. (U) In pre-sentencing hearings, Khawaja's lawyer argued that his client should receive a maximum of 7-and-a-half years and should serve only a symbolic one more day behind bars. (Offenders in Canada usually receive double credit for time served.) The Crown instead asked for two life sentences, plus an additional forty-four to fifty-eight years in prison, with ten years before parole eligibility.

¶4. (U) Justice Douglas Rutherford handed down a ten-and-a-half-year sentence (in addition to the five years already served), with eligibility for parole after five years. Justice Rutherford noted that Khawaja's decision not to address the court made it hard to determine whether he had any remorse for his actions. However, he underscored that, in determining the penalty, "we must jealously guard our independence and freedom here in Canada and we must strongly repudiate what underlines our core values." Defense and Crown lawyers in the case expressed disappointment with the sentence immediately and signaled that each side would likely appeal the sentence.

¶5. (U) In a separate terror case, a Toronto youth is awaiting sentencing following his conviction in September 2008 under the Anti-terrorism Act for his role in the so-called Toronto-18 case.

Amending the Act

¶6. (U) The Khawaja sentencing came the same day that the government reintroduced a bill to amend the 2001 Anti-terrorism Act. A previous bill had passed the Senate, but not the House of Commons, when the 39th Parliament dissolved for the October 2008 federal

election. The bill would reinstate two provisions that had lapsed under sunset conditions in 2007 -- giving police the powers of preventative arrest and the ability to compel witnesses to testify at investigative hearings into terror offences that have occurred or may be imminent. These powers would be subject to a five-year sunset provision.

¶7. (U) Neither the then-Liberal government nor the current Conservative government had ever made use of these provisions while they were on the books between 2002 and 2007. However, Justice Minister Rob Nicholson insisted in a statement accompanying the bill's release that not having them available for use "creates a serious gap in Canadian law." He underscored that, in seeking their reinstatement, "the Government is demonstrating its continued commitment to safeguarding our national security."

¶8. (SBU) According to Conservative MPs on the Commons' Standing Committee on Public Safety and National Security (which is likely to examine the bill in the Commons), it is "too early to tell" how the opposition parties will view the bill. The Liberal official opposition under then-leader Stephane Dion had blocked the renewal of these powers in the Commons in 2007. However, the Liberal-dominated Senate subsequently passed the previous proposed legislation to reinstate them in March 2008. The MPs also underscored that the composition of the Commons had changed since the election (including the loss of some veteran Liberals who had favored robust anti-terror initiatives) and that, in their opinion, it had become a "little more left." However, they noted that Liberal leader Michael Ignatieff was "flexible" and has a record in his life before politics of supporting robust anti-terrorism measures.
BREESE